

STATE OF MICHIGAN
COURT OF APPEALS

DUANE FRANCIS CHIZMADIA,

Plaintiff-Appellant,

v

MICHELLE ANNETTE CHIZMADIA,

Defendant-Appellee.

UNPUBLISHED

December 22, 2011

No. 298604

Lapeer Circuit Court

LC No. 95-021724-DM

Before: SHAPIRO, P.J., and WHITBECK and GLEICHER, JJ.

PER CURIAM.

Plaintiff Duane Chizmadia appeals the trial court's order requiring him to pay defendant Michelle Chizmadia's attorney fees. We vacate the award and remand for reconsideration pursuant to the proper standard.

I. FACTS

The parties married in 1991, became parents of a son in 1993, and divorced in 1997. The parties disagreed on issues related to their son's education. The trial court entered an order changing custody to allow the child to attend the school as a boarding student. Duane Chizmadia appealed the trial court's order to this Court.¹ The *Chizmadia I* Court affirmed the trial court's order. While the previous appeal was pending, Michelle Chizmadia moved for attorney fees in connection with that appeal. The trial court held that Duane Chizmadia would be liable for Michelle Chizmadia's attorney fees and ordered that he pay interim fees of \$4,000 until this Court reached a decision in the previous appeal.

¹ *Chizmadia v Chizmadia*, unpublished per curiam opinion of the Court of Appeals, issued March 9, 2010 (Docket No. 294395).

II. ATTORNEY FEES

A. STANDARD OF REVIEW

Duane Chizmadia argues that the trial court erred in awarding attorney fees to Michelle Chizmadia because she failed to provide any evidence to justify the award. This Court reviews for an abuse of discretion a trial court's decision to award attorney fees.² An abuse of discretion occurs if the trial court's decision falls outside the range of reasonable and principled outcomes.³

B. LEGAL STANDARDS

In domestic relations cases, both statute and court rule provide for an award of attorney fees. It is within the trial court's discretion whether to award attorney fees.⁴ The party requesting attorney fees must allege sufficient facts to show that: (1) he or she cannot bear the expense of the attorney fees, but the other party can, or (2) the other party's refusal to follow a previous court order caused the attorney fees.⁵

If the trial court decides to award attorney fees, the award must be for reasonable attorney fees, not necessarily the actual fees charged.⁶ The party requesting the attorney fees bears the burden to prove that the fees are reasonable.⁷ An evidentiary hearing is appropriate if the reasonableness of the fees is disputed.⁸ But if the parties have created a sufficient record to review the issue, then the trial court need not hold an evidentiary hearing.⁹

C. APPLYING THE LEGAL STANDARDS

We agree that the trial court erred in its decision to award attorney fees. But we conclude that the error was the trial court's failure to support its decision with a sufficient record.

Michelle Chizmadia justified the request for attorney fees by stating that Duane Chizmadia was an engineer for General Motors and she was a registered nurse. Michelle Chizmadia alleged that she paid for all of their son's education and that Duane Chizmadia had been able to amass some wealth since the divorce. But Michelle Chizmadia did not provide any

² *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008).

³ *Id.*

⁴ MCL 552.13; MCR 3.206(C); *Borowsky v Borowsky*, 273 Mich App 666, 687; 733 NW2d 71 (2007).

⁵ MCR 3.206(C)(2).

⁶ *Smith*, 481 Mich at 528.

⁷ *Id.*

⁸ *Miller v Meijer, Inc*, 219 Mich App 476, 479; 556 NW2d 890 (1996).

⁹ *Head v Phillips Camper Sales & Rental Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999).

evidence to support these allegations. The record contained no evidence of either party's income or expenses, or any evidence of their son's tuition or how it was paid. The record contained no proof that Michelle Chizmadia could not bear the burden of the attorney fees or that the fees were a result of Duane Chizmadia's refusal to follow a previous court order.¹⁰

The trial court granted Michelle Chizmadia's motion by saying, "The Court is satisfied that there has been an adequate showing, pursuant to the court rule and statute, that attorney fees should be awarded." The trial court never addressed either party's ability to pay the fees and never stated why it believed Michelle Chizmadia met her burden or why Duane Chizmadia should pay Michelle Chizmadia's attorney fees. The record lacked any evidence or reasoning to support the trial court's decision.

It is impossible to determine whether the trial court abused its discretion; the record is insufficient and lacks any indication as to how the trial court reached its decision. We therefore vacate the trial court's award of attorney fees and remand this case for reconsideration of the motion pursuant to the proper standard.

III. RECUSAL

Duane Chizmadia argues that the trial court should have recused itself because it was biased against him following his appeal of a previous trial court decision. But Duane Chizmadia failed to file a motion to have the trial court recuse itself. We are therefore not required to review this issue.¹¹

Further, to the extent that Duane Chizmadia is requesting that this Court revisit its decision in *Chizmadia I*, we decline to do so. As a general rule, "an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals."¹² During the previous appeal, Duane Chizmadia argued that the trial court should have recused itself because it had predetermined some issues. The *Chizmadia I* Court rejected Duane Chizmadia's argument, finding that the record did not support his allegation. Duane Chizmadia is bound by this Court's previous decision on this issue.¹³

We vacate and remand for further proceedings in accordance with this opinion. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ William C. Whitbeck
/s/ Elizabeth L. Gleicher

¹⁰ MCR 3.206(C)(2).

¹¹ *Nuculovic v Hill*, 287 Mich App 58, 63; 783 NW2d 124 (2010).

¹² *Grievance Adm'r v Lopatin*, 462 Mich 235, 260; 612 NW2d 120 (2000).

¹³ *Lopatin*, 462 Mich at 260.